



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 31, 2004

Ms. J. Middlebrooks  
Assistant City Attorney  
Criminal Law & Police Division  
City of Dallas  
1400 South Lamar Street #300A  
Dallas, Texas 75215-1801

OR2004-2567

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198526.

The Dallas Police Department (the "department") received a request for information regarding the number of officers who have been terminated by the department during the year 2003, including the name of each officer and the reason for the termination. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See Gov't Code* § 552.301(b). The department received the request for information on January 7, 2004.<sup>2</sup> Therefore, the department had until January 22, 2004 to request a decision from us as to

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<sup>1</sup> This letter ruling assumes that the submitted representative sample of information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See Gov't Code* § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

<sup>2</sup> We note that January 19, 2004 was Martin Luther King Day, an official holiday.

whether the requested information must be disclosed to the requestor. The department did not request a decision from us with regard to whether the requested information must be disclosed to the requestor until January 27, 2004. Therefore, we find that the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision from us.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(b) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App. Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because sections 552.101 and 552.117 of the Government Code can provide compelling reasons for withholding information, we will address your arguments under these exceptions.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 545 (1990), 523 (1989) (individual's mortgage payments, assets, bills, and credit history), certain personal choices relating to financial transactions between the individual and the governmental body, *see* Open Records Decision No. 600 (1992) (designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon

review of the submitted information, we find that a portion of the information is protected by common-law privacy. We have marked the information that must be withheld under section 552.101 in conjunction with common-law privacy.

We next address your claim under section 552.117 of the Government Code. Section 552.117(a)(2) of the Government Code excepts from required public disclosure the home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See Open Records Decision No. 622 (1994)*. In this case, the officers at issue have been terminated by the department. If any of the terminated officers remain either a licensed peace officer as defined by article 2.12 or a security officer commissioned under section 51.212 of the Education Code, the department must withhold the information we have marked pursuant to section 552.117(a)(2).

To the extent that the terminated officers are no longer licensed officers, their personal information may still be excepted under section 552.117(a)(1). Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Therefore, if the terminated officers are no longer licensed police officers, the department must withhold the information we have marked under section 552.117 provided they elected to keep this information confidential under section 552.024 of the Government Code prior to the date on which the request for this information was received. Otherwise, we conclude that the department must release the marked information regarding the former department employees.

In summary, the private information we have marked is excepted from disclosure pursuant to section 552.101 of the Government Code. The information we have marked must be withheld if either section 552.117(a)(2) or 552.117(a)(1) applies. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 198526

Enc. Submitted documents

c: Mr. Gregg Millett  
KDFW Fox 4 News  
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(w/o enclosures)